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LETTER OF COMMENT NO. 109

The Financial Accounting Standards Board
407 Merritt 7, P.O. Box 5116
Norwalk, Connecticut 06856-5116

File Reference 1600-100

Ladies and Gentlemen:

CIGNA Corporation appreciates the opportunity to comment on the amendments that the Financial Accounting Standards Board has proposed to Statement of Financial Accounting Standards No. 5 and 141R, "Disclosure of Certain Loss Contingencies" (the "Exposure Draft"). CIGNA and its subsidiaries constitute one of the largest investor-owned health service organizations in the United States. Its subsidiaries are major providers of health care and related benefits, the majority of which are offered through the workplace, including: health care products and services; group disability, life and accident insurance; and workers' compensation case management and related services. With more than 47 million covered lives in the United States and around the world, CIGNA's operating subsidiaries offer a full portfolio of medical, dental, behavioral health, pharmacy and vision care benefits and group life, accident and disability insurance. As of December 31, 2007, CIGNA Corp. and its subsidiaries had shareholders' equity of $4.7 billion. Full year 2007 revenues totaled $17.6 billion.

We support efforts to enhance financial disclosure that improves the transparency and consistency of financial information and provides investors with timely, accurate and reliable information to allow them to make informed judgments about the future operating performance of a company. However, we do not agree that the additional disclosures required by the present proposal will achieve their intended objective of providing enhanced disclosure. Instead, we expect that they will lead to the disclosure of speculative and unreliable estimates, will result in unnecessary stock price volatility, and will impose serious direct and indirect costs on preparers of financial statements.

We also believe that public companies' required disclosure of material loss contingencies under Items 103 and 303 of Regulation S-K as well as the requirements of FAS 5 with respect to financial statements, provides a reliable level of information for investors and other users of financial statements about such matters while also protecting the interests of the reporting entities

in defending litigation. While we understand that certain members of FASB's Investors Technical Advisory Committee have expressed concern that disclosures concerning loss contingencies are not sufficiently robust particularly as they relate to the impact of such losses on future cash flows, we are not aware of widespread dissatisfaction or problems arising from the existing standards. CIGNA's own public shareholders have not expressed such dissatisfaction.

We also note that in 2000, the Securities and Exchange Commission proposed amendments to Item 302(c) of Regulation S-K dealing with loss contingencies that were similar in some respects to FASB's present proposal and abandoned those proposals after receiving extensive adverse comments from public commentators. Those comments are also applicable to this current proposal. We recommend that FASB exclude legal contingencies from the proposal for the reasons described below. We have organized our comments in three areas of concerns: Accounting and Estimation; Legal; and Reporting and Investor Relations.

Accounting and Estimation Considerations

1. **The required disclosures will in many cases be speculative and may be misleading.** Reliability of financial information is a core underpinning of generally accepted accounting principles. The reliability of financial information provided in a company's financial statements is also fundamentally important to users of that information, particularly to shareholders and those in the investment community. We are concerned that the Exposure Draft undermines rather than advances that goal by forcing preparers of financial statements to provide information about the future course of events, particularly legal proceedings, which will in many cases be highly speculative, subject to unpredictable change and error prone.

Sophisticated preparers of financial statements as well as lawyers know that the outcome of legal proceedings is very difficult to predict until the facts surrounding the claim are well developed and certain critical procedural and substantive matters such as venue, claims allowed, significant motions, governing law, trial by jury and other matters have been decided. Forcing preparers to quantify the level of exposure of legal claims before the matter has reached a point at which an outcome can be predicted will lead to disclosures that are little more than speculation. When these estimates prove to be wrong, as they inevitably will in many cases, confidence in the entire reporting system will be undermined.

Under FAS 5 today, a contingency must be disclosed when its occurrence is "reasonably possible," but it only needs to be valued if it is capable of being valued. The "reasonably possible" standard is being applied consistently and effectively today. The current standard has the advantages of ease of application, cost effectiveness, and protecting the legal rights and strategies of the disclosing entity and auditability.

2. **The insurance and healthcare industries face a large number of legal disputes as part of normal operations and compliance with the requirements of the exposure draft will be particularly difficult for our industry.** Preparers in the healthcare and insurance industry face a large number of legal claims and disputes as part of their normal operations. Although the Exposure Draft does not require disclosure of immaterial items, it is not clear how that exception would apply in our industry. We commonly face categories of claims involving similar fact patterns that individually may be immaterial but, as a group could be material to our financial statements, if all were concluded adversely. Given the variability and permutations in fact patterns in our cases, a wide range of outcomes is also possible, some of which could be

individually material. Thus, in order to provide the type of quantitative and qualitative disclosure the Exposure Draft will require, we must track, analyze and potentially discuss a large number of cases whose outcomes are quite uncertain.

It is clear that CIGNA and probably other insurers would have to develop new internal reporting systems to track the progress of a large number of cases to insure that they are accurately analyzed and appropriately disclosed. Once data is collected, it will have to be analyzed and interpreted in coordination with the attorneys who are handling the cases, with the resulting risk that attorney/client matters become publicly disclosed. Such reporting systems will be costly and time consuming to implement and operate without any assurance that they will provide accurate and reliable information to investors.

3. **The guidelines in the Exposure Draft for both quantitative and qualitative disclosures concerning the future course of legal claims are imprecise and this may lead to significant disparities in application among preparers and across industry peer groups.** The guidance in the Exposure Draft with respect to both the qualitative and quantitative disclosures that will be required under the new standard is vague. For example, the requirement to disclose the maximum exposure to loss in certain circumstances[1] may be interpreted inconsistently among preparers. One company may determine that maximum possible exposure means the highest conceivable loss, while another company determines it to be the most likely maximum exposure. When determining the value for punitive or exemplary damages, one preparer may take a conservative view while another takes a more liberal view of valuation. Equally, the qualitative descriptions of the most likely outcome of the proceeding and the assumptions underlying the quantitative estimates are likely to vary greatly among preparers. This discrepancy among the possible approaches to the disclosure requirements will make comparison among financial statements difficult and perhaps impossible, which will frustrate the goal of the Exposure Draft to provide more clarity and transparency in financial disclosures.

Legal Considerations

1. **The disclosures required by the Exposure Draft will change the litigation playing field to the detriment of preparers and their shareholders.** The Exposure Draft gives preparers three quantitative options when dealing with pending litigation: disclose the amount of the plaintiff's claim; disclose the preparer's estimate of its maximum exposure where no claim amount is stated; or disclose the preparer's estimate of the most likely outcome where the preparer does not believe that either of the other two amounts represents a realistic estimate of its exposure. Each of these alternatives has problems.

The least problematic is simply reciting the plaintiff's claim amount because in that instance the preparer is not forced to speculate to arrive at its own estimate of potential losses. However, frequently claim amounts bear little or no relation to the plaintiff's actual loss or the ultimate outcome of the claim. Moreover, because the proposed standard gives preparers an option to provide their own estimates of exposure where they disagree with the plaintiff's claim, the failure of a preparer to respond with such an estimate may be viewed by investors as a tacit acknowledgement that the claim represents the preparer's real exposure. Where no claim amount is stated, which is frequently the case and is required in some jurisdictions, the Exposure Draft forces the preparer to

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[1] See Exposure Draft, Paragraph 7(a).

make the first estimate of possible loss. Whether the estimate is the maximum possible exposure or the preparer's best estimate of the possible loss, it will signal the preparer's views of the claim to the plaintiff and is likely to have a number of adverse consequences for the preparer. For example, the statement may constitute admissible evidence in a trial, set a floor for settlement discussions, and generally give plaintiffs valuable information about the preparer's view of the case. Unfortunately, these potentially significant disadvantages to the preparer will not be balanced by the advantage of providing useful information to investors because estimates of final outcomes of litigation made early in the course of a proceeding have a high risk of being inaccurate. Thus, this requirement not only would provide information that is not likely to be accurate, but it might also undermine the company's legal position by disclosing information regarding the preparer's view of the case.

2. **The qualitative disclosures required by the Exposure Draft will harm preparers by subjecting the preparer's privileged and confidential analysis and strategy to disclosure.** The Exposure Draft also requires detailed qualitative descriptions of the possible loss contingency, including how it arose, its legal and contractual basis, the timing to resolution, the factors that are likely to affect the outcome and the preparer's assessment of the potential outcome and its assumptions underlying those predictions as well as any related insurance or indemnification claims. There are a number of problems with this requirement.

Requiring predictions about the timing and likely outcome of litigation and the assumptions underlying the preparer's conclusions not only requires guessing the future course of very uncertain events, but may give away defense strategies in a way that is very damaging to the preparer. In addition, since preparers frequently rely on counsel as the source for information about the likely future course of litigation, the disclosure may involve waivers of the attorney/client or attorneys' work product privilege. Waiver is a particular concern because once a court determines that a waiver has occurred, all communications between the preparer and its counsel on the matter may be open for discovery and scrutiny.

At CIGNA, like many other large companies, we have a large corporate legal staff and open communication among our in-house lawyers, management and outside counsel is vital to the protection of our interests. We are concerned that such open communication will be inhibited under FASB's proposed amendments if we are forced to comply with the disclosure requirements while also trying to protect our attorney/client communications from discovery.

3. **The disclosures required by the Exposure Draft will be difficult to audit without involving disclosure of privileged attorney/client and work product material.** Estimates are always difficult to audit, but frequently auditors can refer to objective sources of data to test estimates in financial statements. Estimates involving loss contingencies from litigation are particularly difficult, however, because each case is unique and turns on its particular facts, even when the applicable law is the same, predictions are difficult. Today, auditors can obtain information from counsel that is consistent with their need to evaluate management's judgments, but under the proposal, auditors would need significant additional information.

For all of these reasons, there will be pressure on auditors to seek information to test management's assertions on these issues from counsel representing the preparer in the matter because counsel will likely be the best source of such information. The consequence of these discussions will be a significant risk that disclosure of privileged and confidential material to auditors will result in a waiver of privilege. Furthermore, the audit of loss contingencies from litigation costs would result in increased audit costs incurred by preparers. At best, the auditors'

need for information is likely to put strain on the relationship between the preparer and its auditor and at worst will lead to the opening of significant amounts of confidential analysis and data to the company's adversary.

Reporting/Investor Relations Concerns

1. **Changes in temporary circumstances will require changes in disclosures about litigation that will create a misleading volatility in these disclosures.** The quantification requirements of the proposed amendments will require reassessment of loss exposures from material litigation each time a financial statement is filed. Because the potential outcome of a pending case can change many times during its course, the disclosures will also have to change based on any number of factors. These changes may reflect temporary events but they will lead to volatility in the estimates that may surprise investors and cause them to make investment decisions based on faulty assumptions. If a preparer makes an estimate that eventually proves to be wrong, even if made on the basis of its best knowledge and in good faith, and investors act to their detriment on the basis of that information, the preparer may be subject to additional claims for providing temporarily misleading information.

2. **The disclosures required by the proposed amendments may make it difficult for preparers to complete their financial reports in a timely manner and will clutter reports with pages of additional and confusing disclosure.** Given the increased volume of cases subject to disclosure under the proposal and the required level of disclosure, it is foreseeable that there would be circumstances in which a development in a litigation matter occurs on the eve of a financial filing that renders previous estimates of possible exposure wrong and that requires the filings to be delayed in order to evaluate the new information and its effect on the previous estimate and related disclosure. Even though the event that changes the estimate may occur after the close of the period being reported on and is a subsequent event, most careful preparers will want to evaluate whether the new information renders their previous estimate unreliable and thus must be changed.

Such post reporting period events and resulting changes could potentially lead to delays in a preparer's ability to make its Securities and Exchange Commission filings in a timely manner. The consequences of having to delay a periodic filing for a public company can be very serious indeed, including loss of the ability to file registration statements on Form S-3 and loss of the preparer's status as a well-known seasoned issuer, which can affect the Company's ability to access capital. We are also concerned that the additional disclosures may require voluminous discussion that will be confusing to investors.

3. **The requirement to discuss even remote contingencies in certain circumstances may have the effect of changing the definition of materiality.** Under FAS 5 today, preparers rarely disclose remote contingencies assuming that such matters are almost by definition not material. The proposed standard's requirement that even remote contingencies be disclosed where they could be resolved within the next year and have a severe financial impact on the company changes that standard. Every company faces situations at some time that could pose a threat to the enterprise if they were resolved adversely but where the chances of that happening are so remote that the event is not disclosed. Requiring such events to be disclosed and quantified diminishes the preparer's ability to make judgments assessing which events a reasonable investor would consider material and potentially changes well-established concepts of materiality. Such

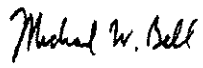
disclosures also threaten to clutter financial reports with matters with confusing information that investors are not likely to find useful.

4. **Aggregation of disclosures at a higher level will not solve the problems caused by the new disclosure requirements.** There is a significant question as to how aggregation "at a higher level than by the nature of the contingency" can be implemented. The Exposure Draft suggests, for example, that categories of cases such as product liability or antitrust cases could be disclosed together, but is not clear how meaningful aggregate disclosure could be given about a group of cases that have a variety of differences, including different exposure risks, different fact patterns, different time schedules, and different venues. Aggregation will produce opaque and confusing disclosures that are more likely to mislead than to enlighten investors. Also, in cases where a preparer identifies one case or one class of cases that has a greater potential impact to the preparer as compared to other cases, aggregation will not provide the shield that it is intended to because the more significant case will dominate the aggregated group and will likely be obvious to a reader of the financial statements.

Conclusion

For the reasons described above, CIGNA Corporation respectfully urges FASB to exclude litigation contingencies from this proposal. We are available to answer any questions you may have in connection with our comments.

Very truly yours,



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